

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34522

STATE OF IDAHO,)	2008 Unpublished Opinion No. 470
)	
Plaintiff-Respondent,)	Filed: May 16, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROBERT DENNIS THOMAS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas F. Neville, District Judge.

Judgment of conviction and unified sentence of five years, with one year determinate, for possession of a controlled substance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Robert Dennis Thomas was indicted by a grand jury on two counts of delivery of methamphetamine and pursuant to a binding Idaho Criminal Rule 11 plea agreement, pled guilty to an amended charge of possession of a controlled substance, methamphetamine, I.C. § 37-2732(c). The district court sentenced Thomas to the agreed upon term of five years, with one year determinate, suspended the sentence and placed Thomas on probation for five years. Thomas appeals, contending that the district court abused its discretion by imposing an excessive sentence.

A defendant who seeks reduction of a sentence to which he has stipulated in a plea agreement must meet a heavy burden. In *State v. Holdaway*, 130 Idaho 482, 484, 943 P.2d 72, 74 (Ct. App. 1997), we explained:

A plea agreement is contractual in nature and must be measured by contract law standards. By his plea agreement, Holdaway stipulated to, and requested from the

court, the very sentence that was imposed. Holdaway's acquiescence in the stipulated sentence was part of the consideration that he gave in exchange for the State's agreement to reduce the charge and to forego its right to urge a more stringent sentence. Holdaway now seeks to retain all of the benefits of the plea bargain while escaping a part of the burden. Such an effort should not ordinarily be countenanced by a court. It is not just the prosecutor who is bound by a plea agreement. A defendant also is obligated to adhere to its terms, and the State is entitled to receive the benefit of its bargain. Therefore, in *State v. Wade*, 125 Idaho 522, 873 P.2d 167 (Ct. App. 1994), we held that a defendant who had received the precise sentence that he had requested in a written plea agreement could not be heard to argue on a Rule 35 motion that the sentence was unreasonable when imposed. We further stated that the defendant's Rule 35 motion could have merit only if it was justified by new or additional information that was not available when the plea bargain was made.

We do not hold that a trial court never has authority to reduce a sentence on a Rule 35 motion after a stipulated sentence has been imposed, but in our view such relief should be allowed only in extraordinary circumstances.

....

Accordingly, we hold that a defendant requesting reduction of a stipulated sentence must show that his motion is based upon unforeseen events that occurred after entry of his guilty plea or new information that was not available and could not, by reasonable diligence, have been obtained by the defendant before he pleaded guilty pursuant to the agreement. The defendant must also show that these unanticipated developments are of such consequence as to render the agreed sentence plainly unjust.

Holdaway, 130 Idaho at 484-85, 943 P.2d at 74-75 (citations omitted).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by imposing the sentence. Accordingly, Thomas's judgment of conviction and sentence are affirmed.